IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1194 OF 2007
IN
EXECUTION APPLICATION NO.20 OF 1998
IN
SUIT NO.3033 OF 1994
AND
SUIT NO.1791 OF 1994

Hamida Karim Ramodiya & Ors. ...Plaintiffs
(Respondents in Chamber Summons)

Versus

Ramzanali Gulam Hussain Ramodiya & Ors. ...Defendants
(Applicants in Chamber Summons)

Shri Kishore Jain for the Respondents in Chamber Summons.

Shri D.D.Madan, Sr counsel with Shri J.S.Kini i/by Shri Suresh Dubey for the Applicants in Chamber Summons.

CORAM : ABHAY S.OKA, J.
DATED : SEPTEMBER 13/14, 2007.

ORAL JUDGMENT:

1. I have heard learned senior counsel Shri Madan appearing for the Applicants in support of the Chamber Summons and Shri Jain for the original Plaintiffs in opposition of the Chamber Summons.

2. The submission made by the learned counsel appearing for the Applicants in support of the Chamber Summons is that the consent decree dated 22nd April, 2006 passed in Suit No.1791 of 1994 is without

jurisdiction and therefore, the same is a nullity. He has invited my attention to the consent decree as well as the consent minutes of order on the basis of which the consent decree was passed. Inviting my attention to the consent decree he submitted that under section 34 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code), the Court does not have jurisdiction to grant interest at the rate which is in excess of 6% per annum from the date of institution of the suit till the realisation. He submitted that only where the liability arises out of a commercial transaction the Court is empowered to award further interest at the rate exceeding 6% per annum. He submitted that while awarding further interest at the rate of 6% per annum, rate of interest cannot exceed the contractual rate of interest and when there is no contract between the parties as regards rate of interest, the rate of interest cannot be more than the rate at which monies are lent or advanced by nationalised banks in relation to commercial transaction. He placed reliance on a decision of learned single Judge of the Gujarat High Court in the case of **Jagjivan Mulchand Chokshi Vs. Manilal Mohanlal Soni, since deceased, through his heirs (2005-GLH-97)** and submitted that the dispute between the parties to the suit arose out of a partnership

dispute which cannot be treated as a commercial transaction and therefore, the court does not possess jurisdiction to grant interest at the rate which is more than 6% per annum.

3. He also placed reliance on a decision of the Apex Court in the case of **Ramnik Vallabhdas Madhavani & Ors Vs. Taraben Pravinlal Madhvani [(2004) 1 Supreme Court Cases Page 497]**. He submitted that in view of what has been held by the Apex Court, the decree granting interest in excess of 6% per annum was illegal and nullity and the same cannot be enforced. He invited my attention to various paragraphs of the majority judgment in the said decision.

4. He placed reliance on decision of the learned single Judge of this Court in the case of Shamrao **Jairam Arbhat Vs. Uttam Bhomaji Modak (1983 Maharashtra Law Journal Page 309)**. He submitted that the view taken by this Court is that section 74 of the Indian Contract Act applies to all contracts and makes no distinction between the contract outside the Court and inside the Court. He submitted that section 74 applies to a contract on the basis of which a decree has been passed by the Court. He submitted that the default clause in the consent decree was in terrorem.

He submitted that in the present case the execution proceeding of the decree is pending and therefore, the Court can go behind the decree and embark upon an enquiry as to whether the terms of compromise were in terrorem and if the terms were found to be in terrorem, the Court can always hold that the decree is inexecutable. He, therefore, submitted that considering the nature of the consent decree passed in the present case, the same will have to be held in terrorem.

5. He submitted that as there was no sufficient time to deal with the contentions raised in the reply filed by the original Plaintiffs to the Chamber Summons, the Applicants have proceeded on the basis that they have denied various contentions raised in the reply.

6. The learned counsel appearing for the Plaintiffs invited my attention to various orders passed by this Court in the proceedings taken out by the Applicants. According to him the contention that the decree was null and void and was not capable of being executed has been already raised by the Applicants in various proceedings including Chamber Summons No.1186 of 2000 and the said challenge has

been rejected by this Court. He submitted that earlier Chamber Summons No.720 of 2006 was filed by the Applicants on the basis of the same contentions. He submitted that though while withdrawing the said Chamber Summons, the Applicants sought permission to file a fresh Chamber Summons, the said prayer was not acceded to by this Court. He also pointed out the conduct of the Applicants of taking out various proceedings from time to time and the strictures passed against the Applicants by various Courts. He submitted that due to the said tactics adopted by the Applicants, the consent decree passed on 22nd April, 1996 could not be effectively executed till today.

7. He placed reliance on a decision of learned single Judge of this Court in the case of **Industrial Credit and Investment Corporation of India Ltd Vs. Sharad Khanna & others (1993 Maharashtra Law Journal Page 448)** and submitted that even assuming that interest in excess of 6% per annum could not have been granted, the decree does not become nullity in as much as there is no lack of inherent jurisdiction on the part of the Court. He submitted that at highest such a decree may not be legal but still the decree will be within jurisdiction. He pointed out that the said decision of the learned single Judge has been

confirmed in Appeal. He also invited my attention to order passed in Chamber Summons No.674 of 1998 filed by the Applicants. He also pointed out the order passed in Chamber Summons No.562 of 2001. He submitted that the issue of nullity raised by the Applicants has been already finally concluded.

8. By way of rejoinder, the learned counsel appearing for the Applicants relied upon a decision of the Apex Court in the case of **A.Jitendernath Vs. Jubilee Hills Co-operative House Building Society & Anr [(2006) 10 Supreme Court Cases Page 96)** and submitted that principles of res-judicata and principles of consecutive res-judicata will not apply where it is contended that the order or decree is a nullity. He submitted that principles of res-judicata cannot be applied in such a case. He submitted that the issues which are raised in this Chamber Summons were never raised in earlier proceedings filed by the Applicants. On instructions he stated that the Chamber Summons No.720 of 2006 as well as the Chamber Summons No.1168 of 2000 was taken out by the Applicants. He also did not dispute that Chamber Summons No.562 of 2001 was taken out by the Applicants. He submitted that the decision of the learned single Judge in the case of Industrial Credit

and Industrial Corporation Limited (supra) is not at all a good law in view of subsequent decision of the Apex Court in the case of Ramnik Vallabhdas Madhvani (supra).

9. I have carefully considered the submissions made by the learned counsel appearing for the parties.

10. It must be noted here that there were two suits filed by the original Plaintiffs. The first suit was Suit No.1791 of 1994 and the second was Suit No.3033 of 1994. The Suit No.3033 of 1994 was filed inter alia for declaration that the Defendant Nos.1 to 4 namely, the Applicants in this Chamber Summons were not entitled to carry on and continue the partnership business of Honesty Provisions and General stores. A prayer was also made for declaration that the partnership business by name and style " Honesty Provisions and General Stores" under the Deed of Partnership dated 12th November, 1977 stands dissolved. The prayers were also made for winding up of the Firm. In so far as Suit No.1791 of 1994 is concerned, the Applicant Nos.2 and 4 were the Defendants in the said suit. The prayer in the said suit was, inter alia, for a declaration that the father of the Plaintiff Nos.1 and 2 as well as father

of Plaintiff Nos.3 and 4 were entitled to 1/4th share each in the building Ramodiya Mansion-II and the Plaintiff Nos.1 and 2 and the Plaintiff Nos.3 to 5 as legal heirs of the late Karim (deceased husband of the first Plaintiff) and Rajabali are entitled to their 1/4th share in the said building Ramodiya Mansion-II.

11. It appears that an Appeal was carried to the Division Bench of this Court against an order passed in interim proceedings in Suit No.3033 of 1994. By order dated 19th August, 1994 a Division Bench of this Court by consent of the parties appointed Shri Mahendra Shah, a senior advocate as a mediator to settle all the disputes between the parties and the claims of the parties against each other in respect of business assets and properties belonging to and/or claimed by them. Accordingly, Shri Mahendra Shah, the learned mediator submitted a report dated 15th August, 1996. The report appears to have been submitted after obtaining valuation report and after detailed discussion of the parties. The report runs into 26 pages. The parties filed consent minutes of the order on 22nd April, 1996 before the Division Bench in the pending Appeal. The consent minutes of order record that decision of the learned mediator was taken on record and decree was passed in terms of paragraph

Nos.21 to 33 of the decision of the learned mediator.

12. The consent minutes of the order further provide that a decree for payment in favour of the Respondents in the Appeal in terms of paragraph Nos.21(2) and 21(4) of the decision of the learned mediator shall be marked satisfied in case the Applicants herein pay to the first Plaintiff for herself and minor daughter a sum of Rs.01,31,71,000/- with interest thereon at the rate of 15% per annum from 01st April, 1993 till payment. Clause (a) provides that in case of default on the part of the Defendant Nos.1 to 4 i.e. the Applicants herein in paying sum of Rs.1,31,70,000/- with interest thereon as aforesaid on or before 17th October, 1996, the decree for entire amount as per clauses 21(2) and 21(4) shall become forthwith due and payable by the Applicants to the Respondents (original Plaintiffs) and the Applicants will be entitled to execute the same. An undertaking of the Applicants and the Plaintiff Nos.1 to 3 was recorded to comply with all the directions and decision of the mediator as contained in decision dated 25th April, 1996 and of all their obligations in the decree.

13. It will be necessary to refer to Chamber

Summons taken out by the Applicants. It is stated that after the Division Bench passed consent decree which has a result of disposal of both the suits, an Application was made by the fourth Applicant (since deceased) for setting aside the consent decree. In the meanwhile, the building Ramodiya Mansion-II was put to sale through the Receiver. A warrant of attachment was issued in the year 1998 in respect of right, title and interest of the Applicants in various properties enumerated therein. On 12th June, 1998 an order was passed confirming the sale of Ramodia Mansion II. According to the case of the Plaintiffs a Chamber Summons No.678 of 1998 was taken out by the Applicants for declaration that the consent decree was nullity and unexecutable which came to be dismissed on 18th December, 1998. It will be necessary to the refer to the order dated 20th October, 2000 (Coram: R.J.Kochar, J) passed in Chamber Summons No.1168 of 2000. There were two reliefs specifically prayed for in Chamber Summons. One was for rejecting the execution application and the second one was to set aside attachment levied under the impugned warrant of attachment. It will be necessary to refer to what was submitted before the learned single Judge. In paragraph No.3 of his order dated 20th October, 2000 the learned single Judge has noted the following

submissions made by the learned counsel appearing for the Applicants.

> "Shri Kirplani very vehemently and vigorously submitted that the execution application and the warrant of attachment attaching the properties of the appellants are required to be quashed and set aside as the execution application based on the impugned consent decree passed on 22.4.1996 in Appeal No.575 of 1994 in Notice of Motion No.1864 of 1994 in Suit No.3033 of 1994 was a nullity and therefore, according to the learned counsel, such a null and void decree cannot be put in execution. Though the learned counsel was vociferous on the point of the consent decree being a nullity in his submission, there is not even a whisper of the decree being nullity in the pleadings in the present chamber summons".

14. In paragraph No.7 the learned single Judge dealt with the submissions of the learned counsel appearing for the Applicants.

> " All subsequent challenges to the consent decree are only is hedged by the

> ingenuity of the advocacy and insatiable greed for property. In spite of the umpteen numbers of orders the family dispute still threatens to survive in the form of the present chamber summons filed by the appellants. The learned counsel for the appellants has put a black label of nullity on the consent decree. He was vehement to submit that the question of nullity can be raised and can be gone into by the Executing Court and even up to the highest Court of this Country. There is no dispute about this established proposition of law. However, the question which arises in my mind is how many times the consent decree should undergo the ordeal answer the test of nullity.

In paragraph No.7 of the order, the learned single Judge dealt with order of another learned signle Judge (Nijjar J) and the order of the Appeal Bench and proceeded to observe as under:

> "Both the Benches have dealt with the point of nullity of the consent decree and have repelled the same. According to me, if the question of nullity of the consent decree has

been gone into finally by one court it is not open for any one to reopen the same issue on some other grounds which occured or struck to the human brain of another Advocate or even the same Advocate. It cannot be said that a particular point was not raised, a particular attack was not made and was lacking at a particular point of time, the same should be allowed in the next subsequent proceedings concerning the same consent decree. Legal proceedings cannot be dragged infinitely along with human igenuity. Every good or bad thing must see its own and at some point of time. As the appeal court and also another learned single Judge has already decided and negatived the question of nullity of the consent decree. I cannot once again be called upon to dig out what has been received a decent burial".

In paragraph No.9 of his order the learned Judge held thus:

". Even before Shri Nijjar, J the chamber summons was for declaration that the above decree passed in the suit was a nullity and

> unexecutable. The learned judge has also specifically observed that he heard Shri Kripalani "at length yesterday as well as today". He has also recorded the submission of the counsel that the Defendant Nos.3, 4 and 5 were not declared to be judgment debtors".

While dismissing the Chamber Summons filed by the Applicants, the learned single Judge recorded a finding that the Applicants have abused the process of Court. This court observed that the Applicants cannot be permitted to test the patience of the Court. He, therefore, directed the Applicants to pay costs of Rs.25,000/- to the original Plaintiffs.

15. It will be also necessary to refer another order passed by this Court in Chamber Summons Nos.674 of 1998 admittedly taken out by the Applicants. Though a copy of Chamber Summons is not on record, in the first paragraph of order dated 18th December, 1998 passed on the said Chamber Summons, the learned Judge has recorded the contention raised by the Applicants that the decree passed in the suit was nullity and was not executable. The learned Judge has also recorded a that the counsel for the Applicants herein submitted

that the consent terms were nullity and no money decree could have been passed in two suits as one suit related to partition of family property and the other for dissolution of the partnership. The said contention was not accepted by the learned single Judge of this Court.

16. My attention is also invited to the order dated 09th October, 2001 passed by another learned single Judge in Chamber Summons No.562 of 2001 taken out by the Applicants. The learned counsel appearing for the original Plaintiffs has pointed out various contentions of the Applicants recorded in the said order and conclusions drawn by this Court. My attention was invited to paragraph No.19 of the said order which deals with a default clause in the consent decree. Paragraph No.20 also deals with the default clause.

17. The first question which is required to be considered is whether it is open for the Applicants to raise a contention that the consent decree is a nullity. As pointed out earlier the submission of the learned counsel for the Applicants on the basis of the decision of the Apex Court in the case of Ramanik Vallabhdas (supra) is that principles of res judicata

are not applicable when an argument is that the decree is nullity. The said submission is made in the context of one of the submissions of the learned counsel appearing for the Plaintiffs that in any event the contentions which are raised in the present Chamber Summons could have been raised in the earlier proceedings filed by the Applicants. However, if the submission of the Applicants in this Chamber Summons that the decree is nullity is already raised in earlier proceedings and is already decided, obviously so far as this court is concerned, the same contention cannot be gone into.

18. Initially there was some controversy whether Chamber Summons Nos.674 of 1998 was taken out by the present Applicants. The learned senior counsel appearing for the Applicants on taking instructions in the open court made a statement that the said Chamber Summons was taken out by the Applicants. The Chamber Summons was dismissed by order dated 18th December, 1998. The relevant portion of the paragraph No.1 of the said order reads thus:

> ". This Chamber Summons have been taken out for a declaration that the decree passed in suit is nullity and inexecutable".

In paragraph No.3 of the said order the learned single Judge has again recorded a contention of the counsel for the Applicants that the consent terms on the basis of which consent decree was passed are nullity as no money decree could have been passed in the suits in question. The learned single Judge in the same paragraph proceeded to observe thus:

> " I am of the considered opinion that the arguments, which are sought to be put forward now, were open to the Defendant in the Appeal filed before the Division Bench. No such arguments having been raised, the same cannot be permitted to be raised now".

Thus, while arguing the said Chamber Summons a specific contention was raised that the decree passed was nullity and was therefore not capable of being executed and the said contention has been rejected.

19. There is no dispute that the Chamber Summons No.1168 of 2000 was taken out by the present Applicants. The said Chamber Summons was dismissed by this Court by order dated 20th October, 2000. One of

the prayers in the said Chamber Summons as noted in order dated 20th October, 2000 was for dismissal of execution of application filed by the Plaintiffs for executing the decree. In paragraph No.3 of the order the learned single Judge has noted the submission made by the counsel for the Applicants that the decree was null and void and cannot be put in execution. The learned Judge noted that in the pleadings in the Chamber Summons there was no reference to the said contentions. The learned Judge noted the contention of the counsel for the Plaintiffs that very same prayers in respect of nullity of consent terms have been rejected in more than five proceedings.

20. The learned Judge has referred to compilation of not less than 13 orders passed by this Court in various proceedings taken out in connection with the consent decree. In paragraph No.5 of the order the learned Judge observed thus:

> " The origin of the litigation is the two suits filed by the Respondents for dissolution of the partnership firm and for administration of the estate of the two deceased who succumbed in the Bomb Blast of 1993. The Court Receiver was appointed for

the partnership firm. It appears that the said order was carried in appeal wherein both the parties agreed to refer the disputes to the meditation of one Shri Mahendra Shah, Senior Counsel of our High Court. It is very pertinent to note that both the sides had given solemn undertakings to the Appeal Court to accept the report of the learned Mediator as final and binding and that the same was not to be challenged on any ground. The Appeal Court passed consent orders on 19.08.1994. After hearing both the learned Mediator submitted his report on 15.4.1996. It appears from the report of the learned Mediator that the appellants were directed to pay the certain amounts with interest to the Respondents as stipulated in the report. On 22.4.1996 the Appeal Court was pleased to pass the consent decree in terms of clauses 21 to 33 of the Mediator's Report dated 15.4.1996. The present appellants had given an undertaking to the Court to make the payment accordingly. However, they failed to do so and committed breach of their undertaking given to the Court whereupon the Respondents filed a contempt petition against

> them and again consent orders were passed directing the Court Receiver to sell the Ramodiya Mansion No.2 with vacant possession as expeditiously as possible".

Thereafter, the learned Judge has referred to Conveyance Deed executed in respect of building Ramodiya Mansion No.II as per the consent decree. In paragraph No.7 the learned single Judge held thus:

> " All subsequent challenges to the consent decree are only is hedged by the ingenuity of the advocacy and insatiable greed for property. In spite of the umpteen numbers of orders the family dispute still threatens to survive in the form of the present chamber summons filed by the appellants. The learned counsel for the appellants has put a black label of nullity on the consent decree. He was vehement to submit that the question of nullity can be raised and can be gone into by the Executing Court and even up to the highest Court of this Country. There is no dispute about this established proposition of law. However, the question which arises in my mind is how many

> times the consent decree should undergo the ordeal answer the test of nullity.

In the same paragraph the learned single Judge after referring to the earlier orders including the order passed in Chamber Summons No.674 of 1998 held thus:

> ". I may add here the interior intention of the appellants that in addition to exhaust all their remedies they want to exhaust the Respondents themselves".

The learned single Judge also referred to observation made by the Division Bench which deal with submission of the Applicants that the decree was nullity. In paragraph No.9 the learned single Judge held thus:

> " Even before Shri Nijjar, J the chamber summons was for declaration that the above decree passed in the suit was a nullity and unexecutable. The learned Judge has also specifically observed that he heard Shri Kirplani "at lenght yesterday as well as today". He has also recorded the submission of the counsel that the Defendant Nos.3, 4 and 5 were not declared to be judgment

debtors".

The learned Judge thereafter proceeded to dismiss the Chamber Summons with exemplary costs of Rs.25,000/- to be paid by the Applicants to the Respondents. Thus, the view taken by the two different learned single Judges while passing orders dated 18th December, 1998 and 20th October, 2000 is that it is not open for the Applicants to raise a contention that the decree is a nullity and that the same is not capable of being executed.

21. The learned counsel appearing for the Applicants has submitted that clause No.4 of the consent decree is in terrorem and therefore, cannot be executed. While dealing with this submission, it will be necessary to refer to the fact that by consent order passed by Division Bench of this Court on 19th August, 1994, Shri Mahendra Shah, a designated senior advocate of this Court was appointed as a mediator. The mediator submitted a detailed report dated 15th August, 1996. The report of the mediator is very elaborate running into 33 paragraphs. The report records that there were number of meetings held by the learned mediator with the parties. The learned mediator in paragraph No.10 of his report has recorded

the agreed position between the parties regarding shares held by different parties. After dealing with various submissions made before him, the learned mediator has recorded his conclusions in paragraph No.21 onwards of his report. On the basis of the said report, consent minutes of order were filed by the parties before the Division Bench in the pending appeal. The consent minutes of the order provided that there will be a decree in terms of paragraph Nos.21 to 33 of the report of the learned mediator. It is provided that the decree in terms of clause Nos.2 and 4 of paragraph No.21 of the report of the learned mediator will be fully marked as satisfied in case the present Applicants pay to Hamida i.e the first Plaintiff for herself and for her minor daughter a sum of Rs.01,31,70,000/- with interest thereon as specified in clause No.3 of the consent minutes of order and in case a sum of Rs.1,26,20,000/- is paid to Nushrat i.e the Plaintiff No.3 in the suit for herself and for her minor children with interest as specified in clause No.3 of the consent minutes of order. The clause No.4 provides that in case default is committed in payment of the aforesaid amounts, the Plaintiffs will be entitled to execute the decree for recovery of amounts as specified in clause Nos.2 and 4 of paragraph No.21 of report of the learned mediator. In

such event it is specified that the Court Receiver, High Court will stand appointed as the receiver of the building Ramodiya Mansion No.2. Thus, a decree was passed by consent for payment of amounts as specified in clause No.21 of the report/decision of the learned mediator. The consent decree provides that the decree will be marked as satisfied provided lesser amounts as provided in clause No.3 of the minutes of order are paid within time stipulated therein and only in case of default, the decree can be executed for recovery of entire amount as specified in clause Nos.2 and 4 of the paragraph No.21 of the report of the learned mediator. It must be noted here that the default clause in the consent decree was dealt with by this Court while deciding the Chamber Summons No.562 of 2001. The learned single Judge while deciding the said Chamber Summons noted in paragraph No.18 that the decree was for higher amount but by consent it was agreed that if lesser amounts as specified were paid by the Plaintiffs within the time stipulated, the decree for payment of money in the sum of Rs.2,01,00,000/- and 01,92,50,000/- will stand marked as satisfied. It was submitted before the learned single Judge that in execution of the decree the concerned the Plaintiffs have received a substantial amount and therefore, the claims stands satisfied. In

paragraph No.26 of the said order, the learned single Judge has observed thus:

> "26. By virtue of the fact that the applicants herein did not care to take advantage of the concession under the decree by which, on payment of Rs.1,92,50,000/- with interest by 17.10.1996, the claim of Respondent No.1 would have been satisfied, as also on payment of Rs.1,26,20,000/- with interest at the rate of 15 per cent per annum by 17.10,1996, the claim of Respondent No.2 would have been satisfied, the decree provided for the default clause in the decree, which in terms reflects the intention of the mediator as also by virtue of the terms of the consent terms, the Respondents herein are entitled to execute the Decree for the entire amount specified under the consent terms which form a part of the decree".

22. Considering what has been held as aforesaid and on plain reading of the contents of the consent minutes of the order it is very difficult to accept the submission made by the learned counsel appearing for the Applicants that decree is in terrorem. There

cannot be any dispute as regards proposition of law laid down by the learned single Judge of this Court in the case of Shamrao Jairam Arbhat (supra). However, considering the nature of the consent decree and the background in which the consent decree was passed, the said submission cannot be accepted.

23. As pointed out earlier in so far as issue of nullity of the decree is concerned, that is already concluded by the orders of the learned single Judges of this Court referred to above and therefore, it is not open for the Applicants to raise the said contention now.

24. It must be noted here that order dated 09th October, 2001 passed by this Court in Chamber Summons No.562 of 2001 was challenged by the Applicants by preferring an Appeal before the Division Bench. The Appeal was dismissed by judgment and order dated 27th October, 2002. In paragraph No.11 of the said decision the Division Bench observed thus:

> " Our attention was also invited to a decision of the Mediator dated April 15, 1996 and the Minutes of Order dated August 19, 1994. In our opinion, however, the learned

counsel for the respondents is right in submitting that after considering the entire material on record, consent terms have been arrived at, and under the said terms, the appellants were required to pay certain amounts. **It was therefore, obvious that the appellants were liable to pay the said amounts, and the respondents were entitled to get them. If there was default by the appellants in paying the said amount, the respondents could get the decree executed. It is also clear that even in past, such a challenge was made by the appellants which could not succeed, and the orders had become final.** The provisions of the Partition Act in our opinion, would not apply to the present case, as the learned single Judge was right in holding that the appellants were liable to pay certain amounts as per the consent decree. If it is so, the order cannot be held to be illegal, unlawful or contrary to law". (Emphasis added)

25. The order passed by the Division Bench has attained finality in the sense that an appeal preferred against the said order was dismissed by the

Apex Court. The Applicants filed review petition and thereafter a curative petition. However, both the Petitions have failed before the Apex Court. In Exhibit A annexed to the reply filed by the original Plaintiffs it is set out as to how the matter has proceeded after the consent decree was passed and as to how proceedings were taken out one after the other by the Applicants with a view to prevent execution of the decree.

26. Reliance has been placed on order dated 27th November, 2006 in Chamber Summons No.720 of 2006. The contention of the original Plaintiffs is that another Chamber Summons being Chamber Summons No.720 of 2006 was filed raising various objections to the execution of the decree by the Applicants. The order dated 27th November, 2006 records that a liberty was sought to file a fresh Chamber Summons by withdrawing the said Chamber Summons No.720 of 2006. The learned single Judge referred to the order passed on 20th October, 2000 in Chamber Summons No.1168 of 2000 and directed the Applicants to pay costs of Rs.10,000/-. The learned Judge allowed Applicants to withdraw the Chamber Summons but did not grant liberty to file a fresh Chamber Summons. The learned Judge also noted that costs of Rs.25,000/- payable under order dated

20th October, 2000 have not been paid by the Applicants. Therefore, this Court directed the Applicants to deposit the costs within period of three weeks from today. It is pointed out in the affidavit in reply that the fact of filing of the said Chamber Summons No.720 of 2006 and order passed thereon has been suppressed by the Applicants. Initially the learned senior counsel for the Applicants stated that the Applicants are unable to remember whether such Chamber Summons was taken out by them. Subsequently after taking instructions in the open court, he stated that the said Chamber Summons Nos.720 of 2006 was taken out by the Applicants.

27. A designated senior advocate of this Court was appointed by consent of the parties as a mediator. The learned mediator undertook a detailed exercise by hearing the parties from time to time and passed an order/report. The parties solemnly agreed to obtain a decree in terms of the said report by filing consent minutes of order. Thereafter since 1996 the decree has not been executed in view of various proceedings only some of which are referred to in this order. The Applicants have not even complied with order dated 20th October, 2000 by paying costs of Rs.25,000/-. The Appellants ought to have disclosed the order

passed on 27th November, 2006 in Chamber Summons No.720 of 2006. Apart from the fact that there is not merit in this Chamber Summons, considering their conduct, the Applicants will have to be directed to pay heavy costs to the contesting Respondents. Considering the facts and circumstances of the case, the amount of costs will have to be quantified at Rs.30,000/-.

28. The Chamber Summons is accordingly dismissed. The Applicants are directed to pay costs of Rs.30,000/- to the Respondents in the Chamber Summons (original Plaintiffs) within a period of ten weeks from today.

JUDGE